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Department of the Treasury

Washington, DC 20224

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PLR-137386-13

Date:

March 10, 2014

Legend

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

Distributing
Business =

Controlled
Business =

Controlled
Business
Expansions =

Distributing
Activities =

Controlled
Activities =

Controlled
Services =

A Activities =

B Activities =

C Activities =

Equipment =

Facilities =

Transition Services =

Transition Period =

Amended Services =
Agreement

Sublease =
Arrangement

DC Plan =

Director DC Plan =

State A =

a =

b =

Dear :

This letter responds to your request dated August 23, 2013 for rulings on certain federal income tax consequences of the Proposed Transactions. The information in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Summary of Facts

Distributing is the common parent of a consolidated group. Distributing has a single class of publicly-traded common stock ("Distributing Common Stock") and a series of preferred stock. Certain shares of Distributing Common Stock currently are held in rabbi trusts under the DC Plan and the Director DC Plan. The right to receive common stock of Controlled in the Distribution (defined below) will be waived with

respect to the shares of Distributing Common Stock that are held by rabbi trusts under the DC Plan and the Director DC Plan. Therefore, those trusts will not hold any common shares of Controlled immediately after the Distribution.

Distributing wholly owns Sub 1 and Sub 2. Sub 1 wholly owns DRE 1, DRE 2 and Sub 3. DRE 1 wholly owns DRE 3. DRE 3 wholly owns DRE 4, DRE 5 and DRE 6. DRE 4 wholly owns DRE 7. DRE 6 wholly owns DRE 8. Each of DRE 1, DRE 2, DRE 3, DRE 4, DRE 5, DRE 6, DRE 7 and DRE 8 is, and DRE 9 will be, upon its formation, an entity disregarded as separate from its owner under § 301.7701-3. All of the entities described above are domestic entities.

Distributing, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Distributing SAG”), is engaged in various business activities, including the Distributing Business and the Controlled Business. Following the Distribution, the Distributing SAG will continue to conduct the Distributing Business, and Controlled, through its separate affiliated group as defined in § 355(b)(3)(B) (the “Controlled SAG”), will conduct the Controlled Business. Financial information has been submitted which indicates that each of the Distributing Business and the Controlled Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Management of Distributing believes that the Distribution will help achieve the following corporate business purposes: (i) to enhance the flexibility of the management teams of each of Distributing and Controlled to make business and operational decisions that are in the best interests of the Distributing Activities and the Controlled Activities, respectively; (ii) to optimize the allocation of capital and corporate resources between the Distributing Activities and the Controlled Activities in a manner that focuses on achieving the strategic priorities of Distributing and Controlled; (iii) to enhance the ability of each of Distributing and Controlled to attract employees with appropriate skill sets, to incentivize its key employees with equity based compensation that is aligned with the performance of its own operations, and to retain key employees for the long term; (iv) to enhance Controlled’s reputation as an independent provider of the services included within the Controlled Activities; (v) to enhance the ability of Controlled to obtain customers, other than Distributing and its subsidiaries, for the services provided in connection with the Controlled Activities by eliminating customer/competitor conflicts; and (vi) to enhance the ability of the constituent companies to more efficiently attract capital (collectively, the “Corporate Business Purposes”).

In connection with the Proposed Transactions (defined below), the Distributing group and the Controlled group will enter into agreements to provide for (i) Transition Services for a period not expected to extend beyond the Transition Period, (ii) the allocation and sharing of tax liabilities and obligations, and (iii) certain other contractual relationships relating to employee matters and other terms of the separation of Distributing and Controlled (collectively, the “Transition Agreements”). The Transition

Services will be compensated on an arm's-length basis if the Transition Period is extended.

In addition to the Transition Agreements, to accomplish an orderly, long-term separation of the Controlled Activities and the Distributing Activities, it is expected that DRE 9 and its subsidiaries will be required pursuant to the Amended Services Agreement to utilize specified minimum levels of Controlled Services from Controlled and its subsidiaries for a period of up to b (not more than 5) years after the Distribution. Controlled and its subsidiaries may continue to provide Controlled Services to Distributing and its subsidiaries after the expiration of the Amended Services Agreement on an arm's length basis and without any utilization guarantee.

Pursuant to the Sublease Arrangement, DRE 4 may continue to sublease certain Equipment from DRE 2 until such time as the Equipment can be purchased from, or leases can be entered into directly with, the owners of the Equipment. It is anticipated that DRE 4 will purchase all, or substantially all, of the Equipment that is subject to the Sublease Arrangement before the Distribution and that the term of any continuing sublease of Equipment from DRE 2 will not continue after the Transition Period.

Distributing and its subsidiaries and Controlled and its subsidiaries may become obligated to make indemnity payments to one another under the Transition Agreements, the Amended Services Agreement, or the Sublease Arrangement. Any such payments would be for liabilities that (i) relate to a taxable period ending on or before the date of the Distribution or a taxable period beginning on or before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution (such indemnity payments, the "Indemnity Payments").

The Proposed Transactions

For what are represented to be valid business purposes, Distributing proposes the following series of transactions (together constituting the "Proposed Transactions"):

1. In a transaction intended to qualify as a reorganization described in section 368(a)(1)(C), Sub 1 will convert into a limited liability company (*i.e.*, DRE 9) pursuant to State A law ("the Sub 1 Conversion").
2. Sub 3 will transfer the Facilities to DRE 3 (either by direct sale or through a distribution to Sub 1 (or to DRE 9, as the case may be if such distribution occurs after the Sub 1 Conversion) and a series of contributions to DRE 3). This Step 2 may occur at any time prior to the DRE 3 Conversion (as described in step 5 below).
3. At any time prior to the DRE 3 Conversion, (i) all the membership interests in DRE 5 will be distributed to Sub 1 (or to DRE 9, as the case may be if such distribution occurs after the Sub 1 Conversion); (ii) DRE 7 will

distribute its assets relating to A Activities and B Activities to DRE 4 (the “DRE 7 Distribution”); (iii) all of the membership interests of DRE 7 will be distributed to Sub 1 (or DRE 9, as the case may be if such transfer occurs after the Sub 1 Conversion); (iv) DRE 8 will transfer its assets relating to C Activities to an unrelated third party (the “DRE 8 Transfer”); and (v) any consideration received by DRE 8 from the DRE 8 Transfer (or, if the DRE 8 Transfer cannot be consummated prior to the DRE 3 Conversion, the assets relating to C Activities) will be distributed to Sub 1 (or DRE 9, as the case may be if such distribution occurs after the Sub 1 Conversion). The transactions described in (i) through (v) may occur in any sequence, provided that (iii) will follow (ii) and, if (iv) is consummated prior to the DRE 3 Conversion, (v) will follow (iv).

4. DRE 3 will issue senior notes to the public (“New Senior Notes”) and will distribute to DRE 1 a portion of the proceeds (the “Distributed Proceeds”), such portion not to exceed the balance of DRE 1’s intercompany note to DRE 9. DRE 1 will use the Distributed Proceeds to repay all or a portion of the balance of its intercompany note to DRE 9.
5. DRE 3 will convert into a corporation (*i.e.*, Controlled) pursuant to State A law (“the DRE 3 Conversion”). Controlled will have outstanding one class of common stock (“Controlled Common Stock”). Distributing believes that the DRE 3 Conversion will be treated for tax purposes as a contribution by Distributing of all of the assets of DRE 3 (the “Contributed Assets”) to Controlled in exchange for all of the Controlled Common Stock and Controlled’s assumption of the liabilities of DRE 3 and any liabilities to which the Contributed Assets are subject (all such liabilities, the “Assumed Liabilities,” and such exchange, the “Contribution”).
6. DRE 1 will distribute all of the Controlled Common Stock to DRE 9.
7. DRE 9 will distribute all of the Controlled Common Stock to Distributing.
8. Following any necessary recapitalization of the Controlled Common Stock into a sufficient number of shares (the “Recapitalization”), Distributing will distribute at least 80% by vote and value of the Controlled Common Stock to the holders of the Distributing Common Stock on a pro rata basis (the “Distribution”). Solely to avoid the expense and inconvenience to Controlled of issuing and maintaining fractional shares, Distributing will cause a transfer agent to aggregate and sell on the open market all fractional shares of Controlled Common Stock to which the holders of Distributing Common Stock would otherwise be entitled. Such holders will then receive a cash payment in an amount equal to their pro rata share of the total net proceeds of those sales.

9. Stock options in Distributing, whether vested or unvested, and certain shares of Distributing restricted stock (with respect to which no section 83(b) election has been made) that are held by Distributing officers, directors, and employees who will be assigned to Controlled in connection with the Distribution will be replaced with adjusted stock options and similar restricted stock, respectively, in Controlled, and any such stock options or restricted stock awards held by the remaining Distributing officers, directors, and employees will be adjusted and remain outstanding.

Representations

The following representations have been made regarding the Proposed Transactions:

1. Any indebtedness owed by Controlled (or its subsidiaries) to Distributing (or its subsidiaries) after the Distribution will not constitute stock or securities.
2. No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
3. Shares of Controlled Common Stock not distributed by Distributing in the Distribution (the "Retained Shares") will not exceed 20% of the outstanding Controlled Common Stock.
4. The business purpose for Distributing's retention of the Retained Shares is to enhance Distributing's liquidity, which will allow Distributing to achieve its strategic objectives by providing capital flexibility.
5. After the Distribution, there will be no common officers or directors between Distributing and Controlled.
6. Distributing will vote the Retained Shares in the same proportion and manner as the votes cast by the other holders of Controlled common stock after the Distribution.
7. The Retained Shares will be disposed of as dispositions are warranted, consistent with Distributing's business purpose for not distributing such shares in the Distribution, but in any event, not later than 5 years after the date of the Distribution.
8. Each of Distributing and Controlled will treat all members of its respective separate affiliated group ("SAG"), as defined in section 355(b)(3)(B), as one corporation in determining whether the requirements of section

355(b)(2)(A) regarding the active conduct of a trade or business are satisfied.

9. The five years of financial information submitted on behalf of the Distributing Business conducted by the Distributing SAG is representative of the present business operations of the Distributing Business conducted by the Distributing SAG, and there have been no substantial operational changes since the date of the last financial statements submitted.
10. The five years of financial information submitted on behalf of the Controlled Business conducted by the Distributing SAG is representative of the present business operations of such business conducted by the Distributing SAG, and there have been no substantial operational changes since the date of the last financial statements submitted.
11. The Distributing SAG neither acquired the Distributing Business nor control of any entity conducting the Distributing Business during the five year period ending on the date of the Distribution (the "Five-Year Period") in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
12. Except for the Controlled Business Expansions, the Distributing SAG neither acquired the Controlled Business nor control of any entity conducting the Controlled Business during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
13. Following the Distribution, except as contemplated by the Transition Agreements, the Distributing SAG and the Controlled SAG will each continue the active conduct of its business, independently and with its separate employees.
14. The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or substantial part, by one or more of these Corporate Business Purposes.
15. The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
16. No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, except for payables arising under the Transition Agreements, Amended Services Agreement, or Sublease Arrangement or indebtedness otherwise arising in the ordinary course of business.

17. Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations.
18. Except for Indemnity Payments and payments made pursuant to the Transition Agreements, Amended Services Agreement, or Sublease Arrangement, any payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
19. For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).
20. For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).
21. The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
22. Immediately after the Distribution, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Distribution or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
23. The payment of cash in lieu of fractional shares of Controlled common stock is solely for the purpose of avoiding the expense and inconvenience

to Controlled of issuing and maintaining fractional shares and does not represent separately bargained for consideration. The total cash that will be paid in the Distribution to any Distributing shareholder instead of issuing fractional shares of Controlled common stock will not exceed one percent of the total consideration that will be distributed in the Distribution. Any fractional share interests of each Distributing shareholder will be aggregated, and it is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled common stock.

24. (i) The fair market value of the Contributed Assets equals or exceeds the Assumed Liabilities; and (ii) the Assumed Liabilities were incurred in the ordinary course of business and are associated with the assets being transferred.
25. No party to the Distribution is an investment company as defined in sections 368(a)(2)(F)(iii) and (iv).
26. Distributing and Controlled, and their respective shareholders, each will pay their own expenses, if any, incurred in connection with the Contribution and the Distribution.
27. No investment tax credit determined under section 46 has been, or will be, claimed with respect to any property transferred by Distributing to Controlled in the Contribution.
28. Distributing neither accumulated its receivables nor made extraordinary payables in anticipation of the Proposed Transactions.

Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Contribution and Distribution:

1. The Contribution pursuant to the Distribution plan will constitute a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to the reorganization” within the meaning of section 368(b).
2. Except to the extent that the Assumed Liabilities exceed the total adjusted basis of the Contributed Assets, Distributing will not recognize any gain or loss on the Contribution. Sections 361(a), 361(b), and 357.
3. Controlled will not recognize any gain or loss on the Contribution. Section 1032(a).

4. Controlled's basis in the Contributed Assets will equal the basis of such assets in the hands of Distributing immediately before the Contribution, increased by the amount of any gain recognized by Distributing on the Contribution. Section 362(b).
5. Controlled's holding period in the Contributed Assets will include the period during which Distributing held such assets. Section 1223(2).
6. Distributing will not recognize any gain or loss on the Distribution. Section 361(c).
7. The holders of Distributing Common Stock will not recognize any gain or loss (and will not otherwise include any amount in income) upon receipt of the Controlled Common Stock in the Distribution. Section 355(a)(1).
8. The aggregate basis of the Controlled Common Stock and Distributing Common Stock in the hands of each holder of Distributing Common Stock (including any fractional share interest in Controlled Common Stock to which such holder may be entitled) will be the same as the shareholder's aggregate basis in the Distributing Common Stock with respect to which the Controlled Common Stock was received, allocated between the Distributing Common Stock and Controlled Common Stock in proportion to the fair market value of each immediately following the Distribution in accordance with Treas. Reg. § 1.358-2(a)(2). Sections 358(a)(1), 358(b)(2), and 358(c).
9. The holding period of the Controlled Common Stock received by each holder of Distributing Common Stock in the Distribution (including any fractional share interest in Controlled Common Stock to which such holder may be entitled) will include the holding period of the Distributing Common Stock with respect to which the Controlled Common Stock was received, provided the shares of Distributing Common Stock are held as a capital asset by such holder on the date of the Distribution. Section 1223(1).
10. A shareholder who receives cash in lieu of fractional shares of Controlled Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share interest in Controlled Common Stock to which the shareholder would otherwise be entitled and the amount of cash received. Section 1001 and Rev. Rul. 66-365, 1966-2 C.B. 116. Provided that the fractional share interest is a capital asset in the hands of the shareholder on the date of the Distribution, any gain or loss will be capital gain or loss. Sections 1221 and 1222.
11. Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10 and 1.1502-33.

12. Except for purposes of section 355(g), any Indemnity Payments will be characterized in the same manner as if such payments had occurred immediately before the Distribution. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.
13. Controlled will not be a successor to Distributing for purposes of section 1504(a)(3); therefore, after the Distribution, Controlled and its direct and indirect subsidiaries that are "includible corporations" (under section 1504(b)) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations eligible to file a consolidated federal income tax return with Controlled as the common parent.

Caveats

No opinion is expressed about the federal income tax treatment of the Proposed Transaction under other provisions of the Code and Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Proposed Transaction:

- (i) satisfies the business purpose requirement of § 1.355-2(b),
- (ii) is being used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)), or
- (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Procedural Matters

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter.

Sincerely,

Lawrence M. Axelrod
Special Counsel to the Associate Chief Counsel
(Corporate)

cc: